

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

HOWARD K. SELZER and	)	
ARIEL SELZER	)	
Plaintiffs	)	
	)	
vs.	)	No. 4:17-cv-3175
	)	
BLUE CROSS BLUE SHIELD OF TEXAS	)	
A DIVISION OF HEALTH CARE	)	
SERVICE CORPORATION, A MUTUAL	)	
LEGAL RESERVE COMPANY	)	
Defendant	)	

**NOTICE OF REMOVAL**

Defendant Health Care Service Corporation, a Mutual Legal Reserve Company, operating in Texas through its division Blue Cross and Blue Shield of Texas (“BCBSTX” or “Defendant”), respectfully removes this action to the United States District Court for the Southern District of Texas, Houston Division.

**INTRODUCTION**

1. Plaintiffs have filed an Original Petition against BCBSTX in the District Court of Fort Bend County, Texas, 240th Judicial District, Cause No. 17-DCV-244905. BCBSTX first became aware of this action when it received a copy of the Petition and a citation on September 21, 2017. Pursuant to 28 U.S.C. § 1446(a), BCBSTX has attached copies of all process, pleadings, or orders served on it or by it as the Appendix to this Notice of Removal.

2. BCBSTX files this removal notice within the 30-day period required in 28 U.S.C § 1446(b).

### **GROUND FOR REMOVAL**

3. This case is removable under 28 U.S.C. § 1441 based on federal diversity jurisdiction existing under 28 U.S.C. § 1332, for the following reasons:

a. Plaintiffs are and were at the time of the filing of the Plaintiffs' Original Petition ("Petition"), individual citizens of Texas. *See* Petition at ¶ III (Appendix, Ex. 2). BCBSTX is currently, and was at the time of the filing of the Petition, a corporation incorporated in Illinois, with its principal place of business in Illinois currently and at the time of the filing of Petition. *See* Exhibit 1.

b. Plaintiffs filed the instant case in the District Court of Fort Bend County, Texas. Plaintiffs allege claims for breach of contract (Petition at ¶ VII) and breaches of the Texas Insurance Code (Petition at ¶ VIII, IX). They seek actual damages, treble damages and attorney's fees. Petition at ¶ XI. Plaintiffs do not specify the exact amount of damages they seek, but they do allege that they seek monetary relief "over \$200,000 but not more than \$1,000,000." Petition at ¶ II. It is therefore apparent from an analysis of Plaintiffs' allegations that the amount in controversy in this action exceeds the jurisdictional sum of \$75,000.00. *See St. Paul Reinsurance Co, Ltd. v. Greenberg*, 134 F.3d 1250, 1255 (5<sup>th</sup> Cir. 1998); *Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326, 1335 (5<sup>th</sup> Cir. 1995).

c. Complete diversity of citizenship between Plaintiffs and BCBSTX exists currently, and existed at the time that Plaintiffs filed their Petition; BCBSTX is not a citizen of Texas and was not at the time that Plaintiffs' Petition was filed; and the amount in controversy exceeds \$75,000. This case, therefore, is removable based on diversity jurisdiction.

4. Venue is proper in this district under 28 U.S.C. § 1441(a) because this district and division embrace the place where the removed action has been pending. *See* 28 U.S.C. § 124(b)(2).

5. Pursuant to 28 U.S.C. § 1446(d), BCBSTX will promptly provide written notice of this removal to the District Court for Fort Bend County, Texas.

Respectfully submitted,

By: /s/ Andrew F. MacRae

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Attorney for Defendant Health Care Service  
Corporation, a Mutual Legal Reserve Company,  
operating in Texas through its division Blue  
Cross and Blue Shield of Texas

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing Notice of Removal has been filed through the CM/ECF system on this 20th day of October, 2017. A copy of this Notice of Removal has also been forwarded via e-mail, to the following counsel of record:

Jon Michael Smith  
3305 Northland Drive  
Suite 500  
Austin, Texas 78731

\_\_\_\_\_  
/s/ Andrew F. MacRae  
ANDREW F. MACRAE

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Defendant	)	

**DECLARATION OF ANDREW F. MacRAE**

STATE OF TEXAS                    §

COUNTY OF TRAVIS            §

1.        My name is Andrew F. MacRae. I am over the age of eighteen (18) years and fully competent in all respects to make this Declaration. I have personal knowledge of the facts stated herein and they are true and correct. I am counsel of record for Defendant Health Care Service Corporation, a Mutual Legal Reserve Company ("HCSC"), operating in Texas through its division Blue Cross and Blue Shield of Texas ("BCBSTX").

2.        HCSC is an Illinois corporation, with its principal place of business in Chicago, Illinois. Since December 31, 1998, BCBSTX has been, and still is, an unincorporated division of HCSC.

3.        I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on October 20, 2017.

\_\_\_\_\_  
/s/ Andrew F. MacRae  
Andrew F. MacRae

**EXHIBIT 1**